

TRANSPORTATION REPORT

From: **Terry Whiteside**

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Supplemental Comments Filed in STB Ex Parte 705 Rail Competition Proceeding

The captive shippers filed extensive comments on the closing date of the record in Ex Parte 705 Rail Competition inquiry by the STB on July 25, 2011. This is one of the most heavily participated hearings held at the STB.

The STB held hearings on June 22 and 23rd at the STB headquarters in DC and had 17 panels (3-5 participants per panel) testify over two long days.

Highlights of the Supplemental comments follow:

Alliance for Rail Competition, Colorado Wheat Administrative Committee, Idaho Barley Commission, Idaho Wheat Commission, Kansas Wheat Commission, Nebraska Wheat Board, Oklahoma Wheat Commission, South Dakota Wheat Commission, Texas Wheat Producer Board, Washington Grain Commission and Montana Farmers Union worked on several points.

- "There are large regions of the country, including entire States such as Montana, North Dakota, Colorado and others, in which there is little or no likelihood of increased rail competition."
- "Even if railroads were inclined to compete for shippers' business by offering rates with less elevated profit margins or by providing higher quality service, access remedies are unlikely to be successful when alternative rail service is hundreds of miles away. And, as the testimony in this proceeding demonstrated, many railroads that could provide effective competition decline to do so."
- "As might be expected from the absence of effective, or any, rail competition in these regions, many of which are west of the Mississippi River, the result is high rail rates, and mediocre or poor service quality.....The North Dakota Grain Dealers Association filed a June 24, 2011 letter to the Board about poor service, including trains arriving so much later than promised that the elevators must hold their crews for extra hours or send them home for a rest period and call them back later. ... We continue to hear reports of Shuttle elevators in Montana getting hit with extremely high demurrage charges caused in part by

- the railroads' inconsistent or untimely delivery of rail cars."
- "During the hearing in this proceeding, Commissioner Mulvey asked what the Board can do to address shipper concerns. The Board should consider ways to reduce existing barriers in law and policy to relief from unreasonable rail rates and charges, and relief from unreasonable rail practices. "
- "ARC et al urge the Board to eliminate relief caps for its simplified rate case remedies....In effect; railroads are rewarded for imposing rates that are more rather than less excessive. This anomaly must be eliminated."
- "If the U.S. cannot copy the Canadian model of final offer arbitration and inter-switching, the Board should nevertheless strive to maximize the effectiveness of voluntary mediation and arbitration. In particular, the Board should facilitate alternative dispute resolution as a way to challenge unreasonably high railroad charges."

The Interested Parties¹ also filed extensive Supplemental Comments:

- " Competition will benefit the Entire U.S. Economy, not just shippers....In actuality, the entire U.S. economy would benefit from easing the stranglehold that the big four railroads have over the shipment of basic commodities on which our economy depends - the products of agriculture, forestry, mining and industry"
- "Increasing competition will not undermine railroad investment. ... A reasonable way of thinking about this is as an adjustment necessitated by the increased market power gained by the railroads in the mega-mergers, and the merging carriers' notable failure to keep their promises that they would compete vigorously after the mergers. ... In fact basic economics shows that investment is stimulated, not deterred, by increasing competition, and specifically by the type of access remedies at issue in this proceeding.
- "Railroads do not have unique capital needs. It is also a myth that rail carriers have unique capital needs that make them unlike other industries such as utilities and telecommunications. "
- "Increased competition would not prevent differential pricing. Finally it is not true that make competitive access remedies available to shipper would prevent railroads from engaging in differential pricing. ... Many competition industries, including the industries of several Interested Parties, engage in differential pricing. Their ability to do so, however, is capped by the competitive markets for their goods.Hence the Interested Parties are merely asking the Board to rely to a greater extent on real competition rather than simulated competition to set rates."

¹ The Interested Parties include the following organizations: Alliance for Rail Competition, The American Chemistry Council, American Forest and Paper Association, American Public Power Association, The Chlorine Institute, Colorado Wheat Administrative Committee, Consumers United for Rail Equity, Edison Electric Institute, Glass Producers Transportation Council, Idaho Barley Commission, Idaho Wheat Commission, Kansas Wheat Commission, Large Public Power Council, Montana Farmers Union, Montana Wheat & Barley Committee, National Association of Wheat Growers, National Grain and Feed Association, The National Industrial Traffic League, National Rural Electric Cooperative Association, Nebraska Wheat Board, Oklahoma Wheat Commission, Portland Cement Association, South Dakota Wheat Commission, Texas Wheat Producer Board, The Fertilizer Institute, U.S. Clay Producers Traffic Association, and Washington Grain Commission.

Supplemental Comments² **also filed extensive Comments:**

- "Increased access to rail-to-rail competition or improved rate regulatory process....we want increased access to rail-to-rail competition, but we need the rate regulatory process of the Board to be accessible to rail dependent shippers.
- "What the undersigned rail-dependent shipper do not accept is the continued protection of the customer base of the individual railroads from competition from another railroad.....This protect is a feature of the old discredited regulatory regime that existed before 1980 and has no place in the "presumed deregulation" regime that was launched in 1980."
- "...The undersigned rail-dependent shippers ask the Board to modify its rules to allow increased access to potentially competing railroad systems. The law and the regulatory regime are designed to work best in a competitive environment."
- "Even if the Board adopts all of the pro-competitive changes in its access rules that have been recommended by rail customers, we recognize that some "captive" rail customers, primarily due to geographic location, will never gain access to potentially competing rail carriers.....For shipper that must have access to the rate regulatory program of the Board, based on the testimony at the hearings and the questions posed by the Commissioners, we recommend one change to and one clarification of the current program."
- "We suggest...a simple policy statement by the Board clarifying that the market dominance test is met when a complainant can demonstrate the absence of effective transportation competition, even if the rail customers is physically connected to more than one railroad."
- Secondly, "remove the damage limits on the Board's Simplified Procedures for challenging the reasonableness of a rate."

² The Supplemental Comments were filed by: Alliance for Rail Competition, The American Chemistry Council, American Coalition for Ethanol, American Forest and Paper Association, American Public Power Association, Arizona Electric Cooperative Corp., Arkansas Electric Coop, Basin Electric Power Cooperative, Colorado Wheat Administrative Committee, Consumers United for Rail Equity, Cooperative Network, East River Power Cooperative, Edison Electric Institute, Gopher CURE, Grandy Canyon State Electric Cooperative Association, Heartland Consumers Power District, Idaho Barley Commission, Idaho Wheat Commission, Iowa Association of Electric Cooperatives, Large Public Power Council, Manufacture Alabama, Minnesota Grain and Feed, Minnesota Rural Electric Association, Minnesota Soybean Growers Association, National Association of Wheat Growers, National Grain and Feed Association, National Farmers Union, National Industrial Traffic League, National Rural Electric Cooperative Association, Nebraska Wheat Board, Ohio Chemistry Technology Council, Oklahoma Wheat Commission, Portland Cement Association, South Dakota Wheat Commission, South Mississippi Electric Power Association, Texas Wheat Producer Board, The Fertilizer Institute, Tri-State Generation and Transmission Association, Inc., The Chlorine Institute, Washington Grain Commission and Washington State Potato Commission